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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,982	11/13/2003	Arkady Glukhovsky	P-2648-US1	6762

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EXAMINER

LEUBECKER, JOHN P

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,982	<b>Applicant(s)</b> GLUKHOVSKY ET AL.	
	<b>Examiner</b> John P. Leubecker	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-7, 12-23 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-11 and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6, 12, 17-22 and 28, drawn to an in vivo camera system including a sensor, classified in class 600, subclass 117.
  - II. Claims 7 and 13-16, drawn to an in vivo camera system with image processor classified in class 600, subclass 109.
  - III. Claims 8-11 and 23-27, drawn to a display system, classified in class 348, subclass 700.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I, II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not capable of use together and they have different modes of operation different and different functions. Particularly, Inventions I and II affect the image capture frame rate and not the display frame rate. However, Invention I detects physical motion of the capsule while Invention II uses characteristics of a stored image. Each invention has a similar effect but operate and function differently to obtain such effect.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and the search required for any one Group is not exclusively required for any other, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Caleb Pollack on January 12, 2005 a provisional election was made without traverse to prosecute the invention of Group III, claims 8-11 and 23-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-7, 12-22 and 28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **DETAILED ACTION**

##### ***Specification***

6. The disclosure is objected to because of the following informalities: the continuation data in the first paragraph of the specification requires updating.

Appropriate correction is required.

##### ***Claim Objections***

7. Claim 11 is objected to because of the following informalities: in claim 11, line 2, "storage" should be --storage unit--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 23, Applicant appears to be setting forth a method for *varying a frame display rate* but fails to recite any steps that result in the intended method being performed. This amounts to an omission of essential steps, such omission making the scope of the claim unclear.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 8-11 and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipate by Urbano et al. (U.S. Pat. 6,228,030).

Urbano et al. disclose a storage unit (138) for storing data, an image processor (140) that is capable of correlating the data to determine the extent of their similarity and generating a

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frame display rate therefrom (note col.10, line 60 to col.11, line 10, for example), and a display (142, Fig. 6). It is noted that although Urbano et al. mentions an opposite correlation between the frame rate and frame similarity than Applicant intends, the apparatus of Urbano et al. is clearly capable of associating the two in any way and thus discloses structure that meets the claimed element (i.e., image processor). Although claims 9 and 10 fail to further limit the structure, Urbano et al. discloses that the image processor is capable of comparing two consecutive frames or two non-consecutive frames (note col.11, lines 50-54 and col.12, lines 15-18 and Figure 8, for example). As to claim 12, a controller is capable of varying the display rate of the display unit (col.14, lines 42-53; it is noted that the time the frame persists on the display equates to the frame rate).

12. Claims 8-10 and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Haskell et al. (U.S. Pat. 3,723,644).

Haskell et al. disclose a storage unit (116) for storing frame data, an image processor (note recording portion of Figure 1), and a display unit (inherent for using output 129). Column 1, line 54 to col.2, line 53 describe how frames are compared for similarity, how one or more frames can be eliminated (making non-consecutive frames) or repeated (making consecutive frames), and that the frame display rate is communicated (as a frame repetition factor).

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Honda et al. (US 2002/0080881)

Sklar et al. (U.S. Pat. 5,098,426)

Beard (U.S. Pat. 6,172,712)

Kondo (U.S. Pat. 5,666,955)

Siefken (2002/0191113)

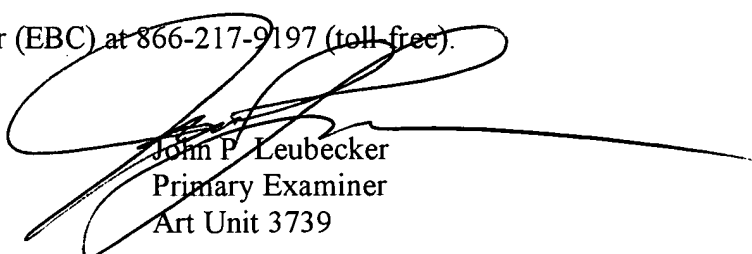
Tyler et al. (U.S. Pat. 5,239,418)

Neuman (U.S. Pat. 6,744,974)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Leubecker whose telephone number is (571) 272-4769. The examiner can normally be reached on Monday through Friday, 6:00 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



John P. Leubecker  
Primary Examiner  
Art Unit 3739

jpl